

# TRANSCRIPT OF RECORD.

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IN THE  
Supreme Court of the United States.

---

October Term, 1921

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No. 9070

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ESSANAY FILM MANUFACTURING COMPANY,  
*Appellant,*

*v.*

WILLIAM R. KANE,  
*Appellee.*

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ON APPEAL FROM THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE THIRD CIRCUIT.

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International, 226 Chestnut St., Philadelphia.

MAY 29 1920



IN THE  
Supreme Court of the United States.

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IN EQUITY.

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ESSANAY FILM MANUFACTURING COMPANY

*Appellant,*

*v.*

WILLIAM R. KANE.

*Appellee.*

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IN THE UNITED STATES DISTRICT COURT, DISTRICT OF  
NEW JERSEY.

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IN EQUITY.

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ESSANAY FILM MANUFACTURING COMPANY

v.

WILLIAM R. KANE.

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DOCKET ENTRIES.

Nov.	13,	1917.	Bill of complaint filed.
"	"	"	Subpœna issued.
"	"	"	Order to Show Cause for Restraint and for injunction filed.
"	15,	"	Subpœna returned served November 14th and filed.
"	14,	"	Bond filed.
"	19,	"	Stipulation and Order adjourning motion and extending time to answer filed.
Jan.	28,	1918.	Notice of Hearing of Order to Show Cause for Injunction filed.
Feb.	4,	"	Hearing on Order to Show Cause why injunction should not issue. Decision reserved.
March	23,	"	Answer filed.
May	10,	"	Stipulation for hearing filed.
June	24,	"	Final Hearing on Bill and Answer. Decision reserved.
March	12,	1919.	Opinion filed.
April	22,	"	Final Decree dismissing Bill with costs to defendant filed.
"	"	"	Assignment of Errors filed.
"	"	"	Petition for Appeal and Order allowing Appeal filed.
"	25,	"	Bond on Appeal filed.
"	"	"	Citation issued.
May	23,	"	Order extending return day of Citation. Copy filed.

IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF NEW JERSEY.

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*Essanay Film Manufacturing Company,* }  
Complainant,  
against  
*William R. Kane,* }  
Defendant.

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BILL OF COMPLAINT.  
(Filed November 13, 1917.)

*To the Honorable Judges of the District Court of the  
United States, for the District of New Jersey:*

The Essanay Film Manufacturing Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, brings this, its bill, against William R. Kane, a citizen of the State of New Jersey, resident and domiciled in Bergen County, in the State of New Jersey, in the District aforesaid.

The ground upon which the Court's jurisdiction depends is that the matter in controversy herein arises between citizens of different States, namely, between the complainant as a corporate citizen of the State of Illinois and the defendant as a citizen of the State of New Jersey, and exceeds, exclusive of interests and costs, the sum or value of three thousand (\$3000) dollars, in that the value of the injunction herein sought by the complainant above named exceeds the said sum of three thousand (\$3000) dollars, exclusive of interest and costs, and moreover that said controversy arises under the Constitution of the United States of America, under that portion of the Fourteenth Amendment thereof, which provides that no State shall deprive any person of property without due process of law, in that a judgment of the Supreme Court of the State of New Jersey has been, or is immediately about to be, entered in said Court against your complainant herein without the service of process of any kind or character upon your complainant herein, and without any appearance in said Court in behalf of your said complainant.

And your complainant alleges and respectfully shows unto your Honors:

1. At all times hereinafter mentioned your complainant was and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Illinois.

2. At all times hereinafter mentioned the defendant herein was and now is a citizen of the State of New Jersey, domiciled and resident in the County of Bergen in said State and District aforesaid.

3. On information and belief, on or about the 30th day of June, 1917, the defendant above named caused to be issued out of and under the seal of the Supreme Court of the State of New Jersey, at Trenton, in said State, a summons which, in terms, required the Essanay Film Manufacturing Company, your complainant above named, to answer the complaint thereto attached within twenty (20) days after service of said writ and complaint upon said Essanay Film Manufacturing Company, and in default thereof stating that judgment might be entered against the said Essanay Film Manufacturing Company for the relief therein demanded against it. Annexed hereto and made a part hereof, marked Exhibit "1," is a copy of the said summons and the complaint in said action.

4. On information and belief, on or about July 9th, 1917, one Alexander M. MacLeod, as attorney for the defendant above named, sent a copy of the summons and complaint described herein as Exhibit "1" to the Secretary of State of the State of New Jersey, and attempted to serve upon said Secretary of State thereby said complaint under and pursuant to paragraph 2 of Section 7 of Chapter 124 of the Laws of 1900 of the State of New Jersey.

5. And thereafter, on or about July 10, 1917, the said Secretary of State caused the said copy of the said summons and complaint to be addressed and mailed to Mr. Durant Church, as the alleged agent of the Essanay Film Manufacturing Company, at No. 828 Broad Street, Newark, New Jersey, but that thereafter the envelope containing the said copy of the said summons and complaint was returned to the said Secretary of State by the Postal Authorities with the mark "Not found" thereon, and that the said summons and complaint has since and now still remains on file in the Department of State of the State of New Jersey.

6. On or about October 29, 1917, your complainant was informed by William R. Kane, the defendant above named, at its office in the State of Illinois, that the said Kane had obtained a judgment for twenty thousand (\$20,000) dollars against your complainant above named in the State of New Jersey, and in the Court aforesaid, and that the said Kane

was willing to settle the controversy involved in said litigation provided and on condition that your complainant would pay to the said Kane the sum of sixteen thousand (\$16,000) dollars, and that unless said payment was made the said Kane would arrange to issue execution upon the said judgment for twenty thousand (\$20,000) dollars and sue thereon in the Federal Court sitting in the District of Illinois, and would then and thereafter endeavor to enforce and collect from your said complainant the sum of twenty thousand (\$20,000) dollars.

7. That at all times mentioned herein your complainant has been and now is engaged in the business of manufacturing and producing motion pictures for public exhibition, and your complainant conducts its said business in and near the City of Chicago, in the State of Illinois, and also at its studio in the State of California, but that your complainant does not now and has not, at any time, done or transacted any of its said business within the State of New Jersey. Your complainant further alleges that it does not now and never has maintained an office for the regular transaction of its business within the State of New Jersey, and although, on or about the 21st day of December, 1910, your complainant filed in the office of the Secretary of State of the State of New Jersey, a statement to enable it thereafter, in the future, lawfully to transact business in said State and in compliance with the provisions of the law of the State of New Jersey relating thereto stated the character of the business which your complainant might thereafter transact in said State, and designated one Durant Church as its agent for the purpose therein specified, nevertheless, your complainant alleges that it did not then or thereafter do or transact any business within said State, and that it did not use the said office therein designated as its office for the regular or other transaction of any of its business in said State. And your complainant further alleges that in or about the month of December, 1910, it desired to institute in the State of New Jersey a replevin suit for the recovery of certain of its property in said State, and that it was then advised that in order to do so it must comply with the laws of the State of New Jersey by filing the statement described herein with the said Secretary of State, and that your complainant filed said statement for the purpose of enabling it lawfully to institute said replevin suit, and for no other purpose. A copy of the statement so filed by your complainant with the said Secretary of State is hereto annexed, made a part hereof, marked Exhibit "2."



8. Your complainant has fully and fairly stated the facts of the case and controversy involved in the said complaint of the said William R. Kane against your complainant, as described in Exhibit "1" hereto annexed, to its counsel herein, and is advised by such counsel, after such statement made, that it has a good and complete defense upon the merits of the matters therein set forth. And in this connection your complainant denies each and all of the allegations contained in paragraphs 1, 2, 3 and 4 of said complaint, except as hereinafter expressly admitted. Your complainant alleges that the said controversy in reality arose out of and because of the following matters.

9. On information and belief, your complainant alleges that late in the month of September, 1915, the defendant above named took up negotiations, in the City of New York, with one Gardner W. Woods, an unauthorized representative of your complainant herein, for the purchase of the motion picture rights throughout the world in certain short stories which had been published in a periodical publication known as the "Black Cat Magazine," and about said time and place the said defendant made an offer to sell to your complainant above named the said motion picture rights in said stories, and on or about September 29, 1915, at the City of New York, the said Gardner W. Woods, without authority from your complainant, accepted said offer of the said defendant above named in substantially the following terms, namely:

"September 29th, 1915.

Mr. W. R. Kane, the Editor,  
Ridgewood, New Jersey.

My dear Mr. Kane:

My understanding of our agreement concerning the motion picture rights to the Black Cat material is as follows:

That you are to send to our Chicago office complete files of twenty years issue of the Black Cat; that from these magazines we are to select a minimum of one hundred stories during the six months following receipt of the magazines in Chicago; that at the end of six months we are to pay you \$12.50 for each story selected, and that we undertake to pay for one hundred stories; that if we wish to take more than one hundred stories we may have them at the same rate, \$12.50 each, that we may make such use of these stories as seem best to us.

That you agree to protect all our rights in every way

and that you do not offer this material to anyone else during the six months above mentioned.

My further understanding is that we may, if we desire, use the name "Black Cat" as the title of a series, and that we have full liberty to use the name of any of the authors of the stories we select; that all this material is at our disposal with the exception of the stories named on the list hereto attached.

GWV/C  
Encl."

Very truly yours,  
(Signed) G. W. Woods.

10. On information and belief, your complainant further alleges that on or about October 11, 1915, without any request from your complainant so to do, the defendant above named caused to be sent to the Scenario Department of your complainant at the City of Chicago, in the State of Illinois, by an express company selected by the defendant Kane as his agent, and not as the agent of your complainant, certain copies of the said magazine entitled and known as the "Black Cat Magazine," and that thereafter the said defendant, on or about November 3, 1915, caused another installment of said magazines to be similarly sent and delivered to your complainant at the place beyond the State of New Jersey, as aforesaid.

11. On information and belief, the said defendant Kane, late in the month of April, 1916, consented to extend the date in which your complainant was to select its one hundred stories from the material contained in the said magazines, as aforesaid, until May 1st, 1916.

12. Prior to the thirty-first day of August, 1916, all of the transactions with reference to the purchase of the said motion picture rights were had between the defendant above named and with the said Gardner W. Woods and one Homer Bushey. The said Woods and the said Bushey were in the employ of your complainant above named between September 29, 1915, and the thirty-first day of August, 1916, but neither then, nor at any time, did either of the said persons have any right or authority to make contracts for or in behalf of your said complainant. On or about the thirty-first day of August, 1916, your said complainant discharged the said Woods and said Bushey from its said the thirty-first day of August, 1916, your said complainant became aware, for the first time, of the existence of the arrangement heretofore described as having been made with the defendant above named and the said employees of your said complainant, and thereafter and about the latter part of October, 1916, your complainant re-

ceived at the City of Chicago, in the State of Illinois, from the attorney for the said defendant above named, a letter dated October 28, 1916, of which the following is a copy:

ALEXANDER M. MACLEOD,  
*Attorney-at-Law*

152 Market Street, Paterson, New Jersey.

Solicitor in Chancery,

October 28th, 1916.

Essanay Film Manufacturing Company,  
1333 Argyle Street,  
Chicago, Ill.

In re Kane v. Essanay.

Gentlemen:

Your letter of October 26th at hand and I am willing to allow you until December 10th, to make your selection of one hundred stories provided you send check in full immediately for one hundred stories at \$12.50 each, total \$1250. I realize you require time to make your selections and if at the end of the time above stated you need further time, say a week or ten days, I am sure I will not object.

Very truly yours,  
(Signed) ALEXANDER M. MACLEOD."

13. Your complainant further alleges that it received said letter from the authorized representative of the said defendant and regarded the same as an extension of its time in which to perform the said contract which the said Gardner W. Woods had assumed to make in its behalf by the said letter dated September 29, 1915, and signed by the said G. W. Woods in your complainant's supposed behalf, and that thereupon at the City of Chicago, in the State of Illinois, as aforesaid, your complainant ratified and adopted the said agreement, and in compliance with the provisions thereof thereafter, on or about November 21, 1916, sent from the City of Chicago, in the State of Illinois, to the said attorney, Alexander M. MacLeod, for the use of the said defendant above named, its check for the sum of one thousand two hundred and fifty (\$1250) dollars in full payment for the rights specified in the said letter signed by the said G. W. Woods, as aforesaid, and dated September 29, 1915, and that thereafter, in due course, the said check was duly paid.

14. Prior to your complainant's adoption and ratification of said contract, as aforesaid, it had received many letters from the defendant above named, representing that the liter-

ary material contained in the said magazines was susceptible of being produced and made into suitable and marketable motion pictures of the kind manufactured and produced by your complainant, and that your complainant would be able to select from said literary material at least one hundred of said stories suitable for its purposes as aforesaid, and that in reliance upon said representations, and believing them to be true, your complainant, not knowing the character of said literary material, selected several stories from said available material and began the manufacture and production of motion pictures therefrom, and that between the first day of November, 1916, and the first day of August, 1917, your complainant was able to find and select a total of not more than thirty-six (36) stories of pictureable material, suitable for its said purposes, and that in reliance upon the said representations of said defendant above named, as aforesaid, your complainant expended a large sum of money in advertising and exploiting a series of motion pictures under the name of the Black Cat series, relying upon the representations and assurances of the said defendant that your complainant would be able to find and select from the material so offered to it stories for at least one hundred motion pictures to be produced and manufactured by your complainant, as aforesaid.

15. Your complainant further alleges that notwithstanding a thorough examination and search of the material contained in the said copies of the said Black Cat magazines, so made available to your complainant by virtue of the matters herein set forth, your complainant was unable to find or select one hundred subjects suitable for the agreed purposes thereof, as herein set forth, and that it has been greatly prejudiced and damaged by the untrue representations of the said defendant, as aforesaid, in that the complainant was induced thereby to expend large sums of money in advertising the said series of Black Cat motion pictures, which said expenditure was justified only upon the representation and assurance of the said defendant to the effect that your complainant would be able to find and select from the material so contained in said magazines, as aforesaid, at least one hundred pictures, as hereinbefore described. Your complainant further alleges, upon information and belief, that the said defendant above named was not and is not now the owner, either of the motion picture rights for the said stories contained in the said magazines, as aforesaid, or the owner of the Black Cat Magazines which contained said stories, but that the said defendant only had an option to purchase, from the true and lawful owner thereof, the motion picture rights

therein, or the said magazines, the terms of which option are unknown to your complainant herein. Your complainant further alleges that notwithstanding the representations made to it as herein set forth, and the great damage and loss it has sustained by reason thereof, and the reliance placed upon said representations to your said complainant, your complainant has nevertheless, at all times, been ready and willing to return and deliver to the defendant herein, within the State of Illinois, the said magazines heretofore delivered to your said complainant by the said defendant, and that your complainant is still ready and willing to deliver said magazines to the said defendant, as herein set forth, so soon as the said defendant produces reasonable evidence of his right to the possession thereof, and so soon as the said defendant pays to your complainant herein the difference between the purchase price of thirty-six (36) of the stories contained in said magazine at the price of \$12.50 per story, aggregating four hundred and fifty (\$450) dollars, and the sum of one thousand two hundred and fifty (\$1250) dollars, heretofore paid by your complainant to the said defendant above named as aforesaid, and such damages as your complainant has sustained by reason of the matter herein set forth.

16. Your complainant further alleges that at no time has your said complainant, or any officer or director thereof, or any representative or agent thereof, been served with process within the State of New Jersey, or elsewhere, in the said suit instituted by the said defendant above named against your complainant in the Supreme Court of the State of New Jersey at Trenton, as hereinbefore set forth, and that neither your said complainant, nor any one on its behalf, has at any time entered any appearance, general or special, in said suit, or done any other act to confer jurisdiction or authority, either over the subject matter of the said suit or over the person of your complainant therein, and that the attempted service of process upon the Secretary of State in alleged behalf of your complainant is void and of no effect, and is not due process within the meaning of the Fourteenth Amendment of the Constitution of the United States, and that the said defendant, notwithstanding the absence of due notice to your complainant, and the absence of the service of any process upon it, threatens to and seeks to enter a judgment in the said cause in the said Supreme Court of New Jersey against your complainant for the sum of twenty thousand (\$20,000) dollars, and threatens to attempt to enforce the said judgment and payment thereunder against your said complainant thereafter in the State of Illinois and elsewhere, to the last-

ing injury and irreparable damage of your said complainant, and that the entry of a judgment in said suit against your said complainant would cause irreparable damage and injury, far in excess of the sum of three thousand (\$3000) dollars, to the credit of your said complainant, and that unless the said defendant, his agents and attorneys, are immediately enjoined and restrained from entering the said judgment and taking any other steps and proceedings in said suit, irreparable damage and injury will be done to your complainant, to redress which your complainant respectfully alleges that it has no adequate remedy at law.

17. Your complainant further alleges that the value to your said complainant of the injunction prayed for herein exceeds, exclusive of interest and costs, the sum of three thousand (\$3000) dollars.

In consideration whereof, and for as much as your complainant is remediless in the premises, except in a court of equity, and in this court, your complainant prays that upon final hearing of this cause the said defendant above named, his agents and attorneys, be permanently enjoined and restrained from continuing to prosecute and maintain the said action now pending against your complainant in the said Supreme Court of the State of New Jersey at Trenton, and that he, his agents and attorneys, be enjoined and restrained, during the pendency of this action, from taking any step or doing any act in aid of entering a judgment against your complainant in said suit, or taking any step or doing any act based upon any judgment in said action, until the final determination of this action, and that a temporary restraining order issue so restraining the defendant, his agents and attorneys, until the determination of your complainant's motion herein for a temporary injunction, as herein prayed for, and that your complainant have such other and further relief in the premises as to the Court may seem proper, and general relief against the defendant above named.

And may it please your Honors to grant unto your complainant a writ of subpoena of the United States of America, issued out of and under the seal of this Honorable Court, directed to the defendant above named, then and there commanding him, on a day certain therein to be named and under a certain penalty, to be and appear before this Honorable Court, there to answer all and singular the matters alleged in the complaint herein, and to stand to, perform and abide by such order, direction and decree as may be made against him in the premises, as shall seem meet and

agreeable to equity and good conscience, together with the costs and expenses of this suit.

And your complainant, as in duty bound, will ever pray.

LINTON SATTERTHWAITE,  
*Solicitor for Complainant.*

Office and Post Office Address:  
1012 Am. Mech. Building,  
Trenton, N. J.

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STATE OF ILLINOIS, }  
COUNTY OF COOK, } ss.:

George K. Spoor, being duly sworn, says, I am the president of the complainant herein; I have read the foregoing complaint and know the contents thereof, and the same is true of my own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

The source of my information and the grounds of my belief as to the matters so alleged in the complaint are the exhibits referred to herein, the records, files and correspondence of the complainant, conversations with persons, including the defendant, familiar with the matters herein set forth, and other reliable sources of information.

The reason why this verification is made by me and not by the complainant is that the complainant is a corporation, I am its president, and thoroughly familiar with the matters herein set forth.

Sworn on to before me this twelfth }  
day of November, 1917. } GEORGE K. SPOOR

JESSE SEIDENBERG,  
(Seal) *Notary Public New York County,*  
New York County No. 138,  
Register No. 8021.  
Expires March 30, 1918.



EXHIBIT "1."

The State of New Jersey, to the Essanay Film Manufacturing Company, a body corporate.

(Seal) You are summoned to answer the annexed complaint of William R. Kane, in an action at law, in the Supreme Court, And take notice that unless you file your answer to said complaint with the clerk of the Supreme Court, at Trenton, within twenty days after service upon you of this writ and the annexed complaint, the plaintiff may proceed in the suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Chief Justice of the Supreme Court, at Trenton, this thirtieth day of June, nineteen hundred and seventeen.

ALEXANDER M. MacLEOD,

*Attorney.*

WILLIAM C. GEBHARDT,

*Clerk.*

I hereby appoint and depute John L. Kane to serve the within writ.

Witness my hand and seal this 2nd day of July, 1917.

RALPH B. SCHMIDT,

*Sheriff.*

By GEO. F. BRANDENBURGH,

*Under Sheriff.*

Due and legal service of the within summons and complaint is hereby acknowledged, this tenth day of July, A. D. 1917.

THOMAS F. MARTIN, (Seal)

*Secretary of State.*



IN THE SUPREME COURT OF NEW JERSEY, BERGEN COUNTY.

<p><i>William R. Kane,</i> Complainant, v. <i>The Essanay Film Manufacturing Com-</i> <i>pany, a Body Corporate,</i> Defendant.</p>	}	<p>Complaint. Action at Law.</p>
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William R. Kane, the plaintiff, residing in the Borough of Glen Rock, in the County of Bergen and State of New Jersey, says that:

1. On the eleventh day of October, the twenty-first day of October and the third day of November, 1915, at Glen Rock, in the County of Bergen aforesaid, was lawfully possessed, as of his own property, of certain goods and chattels, being magazines, periodicals or books, or portions of the same, to wit, one original copy of every issue of the "Black Cat" Magazine here enumerated below; being the original files of the Black Cat Magazine and only files in existence:

- 1895, November and December issues.
- 1896, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1897, January, February, March, April, May, August, September, October, November and December issues.
- 1898, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1899, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1900, January, February, March, April, June, July, August, September, October and November issues.
- 1901, January, March, April, May, June, July, August, October and November issues.
- 1902, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1903, January, February, June, July, August, September, October, November and December issues.
- 1904, January, February, March, April, June, July, August, September, October, and December issues.

- 1905, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1906, February, April, May, June, July, August, September, October, November and December issues.
- 1907, January, February, May, June, July, August, September and October issues.
- 1908, January, February, March, April, May, June, August, September, October, November and December issues.
- 1909, January, February, March, April, May, June, July, August, September, November and December issues.
- 1910, January, March, May, June, July, August, September, November and December issues.
- 1911, January, February, March, April, May, June, July, August, October, November and December issues.
- 1912, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1913, January, February, March, April, May, June, July, August, September, October, November and December issues.
- 1914, January, March, April, May, June, July, August, September, October, November and December issues.
- 1915, January, February, March, April and May issues.

of great value, to wit, of the value of twenty thousand dollars.

2. Being so possessed, the said plaintiff afterwards, to wit, on the days and year aforesaid, at Glen Rock aforesaid, casually lost the said goods and chattels out of his possession, and same afterwards, to wit, on the days and year aforesaid, at Glen Rock, in the county aforesaid, came to the possession of said defendant by finding.

3. Yet the said defendant, well knowing the said goods and chattels to be the property of the said plaintiff, and of right to belong and pertain to him, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, or any or either of them, or any part thereof, to the said plaintiff, although often requested so to do, and hath heretofore wholly refused so to do.

4. Defendant afterwards; to wit, on the days last aforesaid, at Glen Rock, in the county aforesaid, converted and disposed of the said goods and chattels to its own use to the damage of the said plaintiff, twenty thousand dollars; and

the said plaintiff saith that by reason of the premises, a cause of action arose to the said plaintiff, to have of, and from the said defendant said sum of twenty thousand (\$20,000) dollars.

Plaintiff demands as damages twenty thousand (\$20,000) dollars.

ALEXANDER M. MacLEOD,  
*Attorney for Plaintiff.*

### EXHIBIT "2."

#### STATEMENT BY A FOREIGN CORPORATION TRANSACTING BUSINESS IN THE STATE OF NEW JERSEY.

The Essanay Film Manufacturing Company, a corporation foreign to the State of New Jersey and organized under the laws of the State of Illinois, does hereby, pursuant to the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations, (Revision of 1896)," make the following statement and designation:

*First.*—That the total amount of the capital stock said company is authorized to issue is \$2500.00, and the amount actually issued is \$2500.00.

*Second.*—That the character of the business which the said company is to transact in the State of New Jersey in the leasing of motion picture film and is provided in its certificate of incorporation, a copy of which, attested by its president and secretary under its corporate seal, is hereto affixed as part hereof.

*Third.*—That the principal office in New Jersey of the undersigned corporation is located at No. 828 Broad St., Newark, New Jersey, and Durant Church is hereby designated as the agent therein, in charge thereof, and upon whom process against this corporation may be served.

IN TESTIMONY WHEREOF, the said corporation hath caused its corporate seal to be hereto affixed, and  
(Corporate Seal) these presents to be signed by its president and attested by its secretary, the 25th day of November, A. D. 1910.

THE ESSANAY FILM MFG. COMPANY,

By GEORGE K. SPOOR, *President.*

Attest:

FRANK W. REDFIELD, *Secretary pro tem.*

Endorsed:

"Filed and recorded

Dec. 21, 1910.

S. D. Dickinson.

Secretary of State."

STATE OF NEW JERSEY.

(Seal)

DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the statement designating Durant Church as the registered agent of the Essanay Film Manufacturing Company, as the same is taken from and compared with the original filed and recorded in this office on December 21, 1917.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal, at Trenton, this seventh day of November, A. D. nineteen hundred and seventeen.

(Seal)

THOMAS F. MARTIN,  
*Secretary of State.*

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ANSWER.

(Filed March 23, 1918.)

The answer of the above-named defendant to the bill of complaint of the above-named complainant.

In answer to said bill of complaint William R. Kane, defendant, says as follows:

1. I have no information sufficient upon which to base a belief as to the truth of paragraph 1 of complainant's bill.
2. I admit paragraph 2 of complainant's bill.
3. I admit paragraph 3 of complainant's bill.
4. I admit paragraph 4 of complainant's bill except that portion which states that the summons and complaint was attempted to be served upon the Secretary of State of New Jersey, but aver the truth to be that said summons and complaint were served upon the Secretary of State in compliance with and directed by paragraph 2, Section 7, Chapter 124 of the Laws of 1900 of the State of New Jersey.
5. Defendant has no knowledge or information sufficient to form an opinion as to paragraph 5 of complainant's bill.
6. Defendant denies paragraph 6 except as herein set forth. On October 29, 1917, this defendant, while in Chicago, informed George K. Spoor, president of said complainant company, that judgment was about to be entered for \$20,000

against the complainant in the State of New Jersey, and that he was taking proper procedure to have said judgment transferred to the State of Illinois for the purpose of issuing execution for the recovery of said amount; and, further, that the defendant was willing at that time to settle with said complainant the matter in controversy for \$16,000, which proposition was refused by the said George K. Spoor, president of said complainant company aforesaid.

7. Defendant has no knowledge or information sufficient to form a belief as to paragraph 7 except the fact that the records of the office of the Secretary of State of New Jersey show that said complainant did comply with the corporation law of New Jersey requiring the filing of a certificate by foreign corporations transacting business in the State of New Jersey, as shown by Exhibit "2," attached to bill of complaint. And the defendant denies that in complying with said statute the said complainant could select a reason for filing said certificate; and defendant is advised that the filing of said certificate placed the complainant within the law of the State of New Jersey for all purposes, as set forth in the statutes of the State of New Jersey pertaining to corporations of this kind; and that under said laws of New Jersey, Chapter 124, Laws of 1900, the service of the complaint and summons on the Secretary of State is good service, and gave the Supreme Court jurisdiction.

8. Defendant makes no answer or statement as to paragraph 8.

9. Defendant admits paragraph 9 of complainant's bill, except that portion which states that Gardner W. Wood was the unauthorized representative of said complainant, but avers the truth to be that said Wood was the duly authorized agent of said complainant, doing business for said complainant, and located at the eastern office of said complainant in the City of New York; and, further, that said Gardner W. Wood had full authority to accept the offer, and did accept the offer, of the defendant as set forth in the copy of the letter dated September 29, 1915, addressed to this defendant, set forth in said paragraph 9. And this defendant contends that even if the said original contract was unauthorized by said Gardner W. Wood, the same has in every respect been ratified by said company without any change or deviation, with the exception of extending the time in which said complainant was to make its selection. And defendant further contends that the said contract was accepted and consummated at Ridgewood, Passaic County, New Jersey, upon the acceptance

and receipt of said letter of September 29, 1915, and that until the receipt by said defendant of said letter at Ridgewood, New Jersey, and the acceptance of its conditions the said contract was not completed.

10. Defendant denies that on October 11, 1915, without any request from the complainant, he caused to be sent to the scenario department of the complainant at Chicago, Illinois, by an express company selected by the defendant, the said William R. Kane, as his agent, and not as the agent of the complainant, certain copies of the said magazine, but, on the contrary, says that by reason of said letter of September 29, 1915, and upon acceptance of said contract, he did, on October 11, 1915, send to the complainant at Chicago said copies of said magazine referred to in said letter of September 29, 1915.

11. Defendant admits paragraph 11.

12. As to paragraph 12, defendant says that it is true that prior to August 31, 1916, all of the transactions with reference to the purchase of motion picture rights were had between the defendant and Gardner W. Wood and one Homer Bushey, representing said complainant, nor has he any knowledge whether or not the said Wood and Bushey at that time or at any other time had authority to make contracts for or in behalf of said complainant; but defendant says that if they did not have authority at that time, the contract and agreement entered into between said complainant and defendant has been ratified in toto except the extension of time in which said complainant was to select the stories, that portion being extended by mutual agreement. And defendant further says that it is true as set forth in said bill of complaint that one Alexander MacLeod, attorney for said defendant, consented to extend the time for said complainant to make the selection to December 10, 1916, and that by reason of the correspondence between said George K. Spoor, president of said complainant company, and the said Alexander MacLeod, and upon the consented extension of time in which said complainant was to make selection of the stories said complainant, on November 24, 1916, sent its check for \$1250 in payment of the 100 stories so selected, which check was subsequently paid. Copy of said letter is as follows:

"Chicago, Nov. 21, 1916.

Mr. Alexander MacLeod,  
152 Market St.,  
Paterson, N. J.

Dear Mr. MacLeod:

Please find enclosed our check for \$1250 in payment

in full for the world's right to one hundred of the stories we will select from The Black Cat Magazine file, we have at our plant in Chicago.

I can only offer you an apology, Mr. McLeod, for the delay in forwarding this check to you, and in defense of my apparent negligence, will say that my time and attention has been almost entirely taken up with matters outside of our Chicago office, and I have been very little in Chicago.

I fully appreciate the consideration you have extended to us in this matter and want to thank you for your patience.

I also want you to know that the present film market did not offer much in the way of an outlet for these short stories, and it was up to me to create some new plan, and I necessarily was obliged to feel out the situation over the entire country before I could arrive definitely upon a plan that would enable us to work out a satisfactory arrangement to produce these short stories. I feel now that our investment in these short stories will work out nicely and I will be interested to learn from you some further proposition for an additional number of the stories or the entire file.

We are just getting into the stories and while it looks promising, it may work out a little differently than we believe it will; however, we will appreciate hearing further from you with regard to further selection beyond the stories we are paying you for with enclosed check.

Very truly yours,

ESSANAY FILM MANUFACTURING CO. INC.

George K. Spoor,

*President.*

13. This defendant admits the truth of the allegations set forth in paragraph 13, complainant's bill.

14. As to paragraph 14, defendant denies that complainant's adoption and ratification of said contract was based upon the representation of the defendant, and denies that he ever guaranteed that the material contained in the Black Cat Magazine was produceable or otherwise, but on the contrary this defendant says that before any agreement was made or understanding arrived at between him and the said Mr. Wood for the complainant, that this defendant submitted to the complainant a large number of copies of the Black Cat Magazine, selected at random for its persual, and by reason of the perusal of the magazines submitted and after



due investigation by the complainant, the agreement heretofore referred to was entered into. That the minimum number of stories to be paid for was one hundred, to be selected from said magazines. That there was no understanding or suggestion that the said complainant was to pay for only the stories selected, but on the contrary, they had the right of selecting as many as they desired over one hundred at the same price of \$12.50 per story. And at the time the contract was entered into the complainant specifically demanded the privilege of reserving the right to make a selection of as many stories as they desired over the minimum number of one hundred, which reservation was consented to by this defendant. That when the said contract was entered into there were certain stories reserved by said defendant, which could not be used by said complainant, a list of which was given to the complainant at that time, amounting all told to possibly thirty-five stories, which had already been sold to other producers. That after the receipt of the Black Cat Magazines by the complainant at its Chicago office, this defendant says that while visiting the office of said complainant in Chicago on October 29, 1917, the scenario editor of said complainant, at Chicago, informed this defendant that the one hundred stories from the Black Cat Magazine had been selected for production.

15. Defendant has no knowledge or information upon which to form a belief as to paragraph 15, except that at no time did he make any representation or assurance to the said complainant or any of its officers or agents, or any guarantee that the said complainant would be able to secure at least one hundred pictures from the said Black Cat Magazines; and further, defendant denies that he is now or was at the time of said contract so entered into, the owner either of the motion picture rights for said stories contained in said magazines aforesaid, or the owner of the Black Cat Magazines which contained said stories; but avers the truth to be that he had the absolute and sole right of disposing of the stories of the Black Cat Magazine. That he was not the owner of the original files of the said Black Cat Magazine, but that he had the right of possession and use thereof for the purpose of sale. That no other person had the right of disposing of any of the stories in said magazine, and at the time the contract was entered into and at the present time, he has the sole right of disposing of said stories. And this defendant further avers that the Black Cat Magazines sent to said complainant were the original files and the only copies in existence complete, as far as this defendant knows, covering a period of twenty years from November, 1895, to



May, 1915, inclusive, with the exception of a few issues which are missing in the original files, and by reason thereof said original files have become very valuable, and contain in all over two thousand stories. And this defendant denies that the complainant at any time tendered the return of the original files of the Black Cat Magazine except a conditional surrender as shown by letter of complainant dated March 23, 1917, which letter was written by said complainant after repeated demands from defendant to return the complete files of the Black Cat Magazines, which letter is copied in full as follows:

Chicago, March 23, 1917.

Mr. Alexander MacLeod,  
152 Market St.,  
Paterson, N. J.

Dear Sir:

In reply to your letter of March 20th, I hope you understand that it has not been a desire on our part to retain the complete file of "The Black Cat Magazine" but a necessity, in order that we could get from them that which we have paid for.

After receiving your letter today an idea struck me that the situation could be somewhat compromised and I suggested the following: Supposing we send you the complete "Black Cat" file which we have, holding back for our use to complete our selection of the one hundred stories an even one hundred numbers of the "Black Cat Magazine" which we would return to you as soon as our selections are completed.

It is a very difficult job, Mr. MacLeod, to pick these stories on the basis which we are, i. e., merely finding the idea with the entire construction of the photoplay to be made by our own scenario writers. We pick many of them and turn them over to the scenario department only to have them handed back as being impossible. If my plan is acceptable, and I hope it will be, you can wire me or write me, and we will make immediate shipment of the entire file, withholding the one hundred as I have suggested.

Very truly yours,

ESSANAY FILM MFG. COMPANY, INC.

Geo. K. Spoor, *President.*

Which conditional surrender this defendant positively refused to entertain, and therein instituted suit in the Supreme Court of New Jersey against said complainant for the recovery of the files of said magazines, said suit being

based on conversion by the said complainant of the original files of the Black Cat Magazines as set forth in the complaint attached to said bill of complaint.

16. Defendant admits paragraph 16 except that portion in which complainant states that service upon the Secretary of State of New Jersey is void and of no effect, but on the contrary insists that the same is within and in accordance with the laws of New Jersey and within the Fourteenth Amendment of the Constitution of the United States, as follows:

2. "In case any domestic corporation or any foreign corporation authorized to transact business in this State, shall fail to file such report within the time required by this section, or in case the agent of any such corporation designated by any such corporation as the agent upon whom process against the corporation may be served shall die, or shall resign, or shall remove from this State, or such agent cannot with due diligence be found, it shall be lawful, while such default continues, to serve process against any such corporation upon the Secretary of State, and such service shall be effective to all intents and purposes as if made upon the President or head officer of such corporation, and within two days after such service upon the Secretary of State as aforesaid, it shall be the duty of the Secretary of State to notify such corporation thereof by letter directed to such corporation at its registered office in which letter shall be enclosed a copy of the process or other paper served, and it shall be the duty of the plaintiff in any action in which said process shall be issued to pay the Secretary of State, for the use of the State, the sum of three dollars, which said sum shall be taxed as a part of the taxable costs in said suit if the plaintiff prevails therein; the Secretary of State shall keep a book to be called the 'process book' in which shall be recorded alphabetically, by the name of the plaintiff and defendant therein, title of all causes in which processes have been served upon him, the test of the process so served and the return day thereof, and the date and hour when such service was made."

That there is no absence of service of any process upon it but on the contrary, by their own admission, they attempted, when the Secretary of State complied with the law notifying said complainant of the penalty of said suit, they through their own negligence failed to file any answer thereto or to attack at that time the service.

17. Defendant denies paragraph 17 of complainant's bill.

18. Defendant, further answering, says that at the time the contract for use of the stories of the Black Cat Magazine up to approximately January 1, 1917, the stories contained in the Black Cat Magazine were of great value for the purpose of photoplay, production and exhibition having changed, the stories of the Black Cat Magazine have lessened in value. The demand for photoplays based on the stories of the character and length contained in said Black Cat Magazine has also greatly lessened, and for that reason, this deponent believes, is the only reason the complainant is attempting to avoid its liability for said conversion.

And defendant further says that the complainant has released photoplays based on stories contained in the Black Cat Magazine under the name or title of "Essanay Black Cat Films," and by reason thereof have appropriated to itself the title of Black Cat Series, and thereby created a certain trade value, which would be hard to dispose of to any other producer, and making the title "Black Cat" valueless to the defendant as far as using the title "Black Cat" is concerned.

And defendant further says that he denies that said complainant is remediless in the premises except in a court of equity and in this court, but, on the contrary, says that the said complainant has adequate remedy in the law in the Supreme Court of the State of New Jersey, where every complaint set forth in the complainant's bill is subject to adjudication.

And defendant further says that the judgment heretofore entered by default of the defendant on proper notice and upon proof of the matters contained in the bill of complaint could be opened if it were shown that service was improper and the complainant allowed to answer if a meritorious defense was shown. And the said complainant would be also allowed to interpose his counter claim for damages in the Supreme Court of New Jersey and to try out before the said Supreme Court of New Jersey any dispute between the parties, and until said complainant exhausts its legal right in the courts at law of New Jersey the complainant has no standing in the court of equity or in this court. And defendant says the facts set forth in said complaint do not make the case out against him, and he prays that said bill of complaint may be dismissed for failure to make out a case, and that this answer will act as a demurrer under the old practice.

ALEXANDER M. MACLEOD,  
*Attorney of Defendant.*

STATE OF NEW JERSEY,  
 COUNTY OF PASSAIC,  
 DISTRICT OF NEW JERSEY, } ss.:

William R. Kane, being duly sworn, upon his oath deposes and says: I am the above-named defendant. So much of the foregoing answer as concerns my own acts and deeds is true, to the best of my knowledge; and so much thereof as concerns the acts and deeds of any other person or persons, I believe to be true.

Sworn to and subscribed before me }  
 this twenty-eighth day of March, } WILLIAM R. KANE.  
 1918.

ALEXANDER M. MacLEOD,  
*Attorney at Law of N. J.*

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### STIPULATION.

(Filed May 10, 1918.)

It is hereby stipulated and agreed between the attorneys for the respective parties hereto that the above-entitled cause may be submitted to the Court on bill and answer for final determination on May 13, 1918, at the City of Trenton.

It is further stipulated that the matters set forth in the bill and answer are to be taken as the facts, and all the facts, in the above-entitled cause.

Dated May 6, 1918.

LINTON SATTERTHWAITE,

By W. M. SEABURY,

*Attorney for Complainant.*

ALEXANDER M. MacLEOD,

*Attorney for Defendant.*

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### OPINION.

(Filed March 12, 1919.)

RELLSTAB, *District Judge.*

The plaintiff, an Illinois corporation, by its bill alleges that the defendant is prosecuting an action at law against it in the New Jersey Supreme Court, without having served it with process, and without its having entered an appear-

ance in that suit, and prays that he may be enjoined from further prosecuting said action. The suit thus sought to be enjoined has proceeded to an interlocutory judgment, and under the practice prevailing in the New Jersey Supreme Court no final judgment can be entered therein until an assessment of damages has been made. (See Article VIII, Rules 87 to 91 of Rules of the Supreme Court of New Jersey, 1913.)

The following question, though not expressly raised in the pleadings, emerges therefrom: Does this suit fall within the prohibition of section 265 of the Judicial Code? This section, a re-enactment of section 720 R. S., U. S., provides:

“The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.”

This limitation upon the power of a United States Court to restrain proceedings in a State court originated in the Act of March 2, 1793 (1 Stat. L. 333, 335), and has been a part of the United States judicial system ever since.

The plaintiff relies solely upon *Simon v. Southern Ry. Co.*, 236 U. S. 115, and contends that under it the case at bar is not within the limitation referred to. However, the Simon case dealt with an attempted enforcement of a final judgment. This difference is vital. Mr. Justice Lamar, in that case (pp. 123-5), expressly noted that with the rendering of a final judgment and an attempt to enforce it, “a new state of facts, not within the language of the statute, may arise”; that the Federal Court’s control over the judgment was to be determined by well-recognized equity powers to prevent an improper enforcement or inequitable use of it, and that to enjoin a judgment obtained without service was within its jurisdiction, notwithstanding the limitations of the statute.

As the suit in the State court has not reached a stage where it can be enforced, what is there in the proceedings to take it out of the limitation of the statute? The power of the equity courts to prevent threatened injury is based on the fact that, unless they act, a wrong will be perpetrated irreparable at law. *National Surety Co. v. State Bank* (C. C. A. 8), 120 F. 593, 597. In an action *in personam* such injustice cannot result until the entry of final judgment and an attempt is made to enforce it.

What will be done in the State court in the suit here drawn into question cannot now be known. If no further proceedings are taken, no possible legal injury can result to the

plaintiff here. If judgment final be taken and an attempt be made to enforce it, the plaintiff here may, as was said by Mr. Justice Pitney, in *Western Indemnity Co. v. Rupp*, 235 U. S. 261, 273:

“ignore the proceeding as wholly ineffective and set up its invalidity if and when an attempt is made to take his property thereunder, or when he is sued upon it in the same or another jurisdiction,”

or, if unwilling to take a defensive attitude, and merely await proceedings based on such judgment, he may take the more aggressive action under *Simon v. Southern Ry. Co.*, *supra*, and seek to enjoin its enforcement.

I have been unable to find any case where a Federal court has enjoined a suitor in a State court from proceeding to final judgment in an action *in personam*, except where the former had first obtained jurisdiction of the subject matter. I am of the opinion that until the proceedings here sought to be enjoined have developed into a final judgment they are literally within the prohibition of section 265 of the Judicial Code, and that until the entry and attempted enforcement of such judgment a Federal court cannot take cognizance of the plaintiff's allegation of lack of service as a ground for enjoining the defendant from prosecuting his suit in the State court.

The bill is premature and must be dismissed.

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#### FINAL DECREE.

(Filed April 22, 1919.)

This cause having been duly submitted to this Court on June 24, 1918, for final determination on the bill and answer herein, pursuant to the stipulation of the parties herein, dated May 6, 1918, and duly filed herein, and due deliberation having been had thereon, it is,

On motion of Alexander H. MacLeod, Esq., attorney for defendant,

Ordered, adjudged and decreed, that the bill of complaint herein be and the same hereby is dismissed as premature and for want of jurisdiction, with costs to defendant, to which ruling of the Court plaintiff, by its attorney, excepts.

Dated Newark, N. J., April 21, 1919.

JOHN RELLSTAB,  
*United States District Judge.*

## ASSIGNMENT OF ERRORS.

(Filed April 22, 1919.)

Now comes plaintiff in the above-entitled cause and makes and files the following assignment of errors upon which it will rely upon its prosecution of the appeal in the above-entitled cause from the decree made by this Honorable Court on the 21st day of April, 1919.

1. That the United States District Court for the District of New Jersey erred in dismissing the bill of complaint herein.

2. That the United States District Court for the District of New Jersey erred in not granting the relief prayed for by the bill herein.

3. That the United States District Court for the District of New Jersey erred in holding that the suit herein falls within the prohibition of Section 265 of the Judicial Code.

4. That the United States District Court for the District of New Jersey erred in holding that the rule of law enunciated in *Simon v. Southern Railway Co.*, 236 U. S. 115, is confined to cases in which a final judgment is sought to be enforced.

5. That the United States District Court for the District of New Jersey erred in not holding that the rule of law enunciated in *Simon v. Southern Pacific Railway Co.*, 236 U. S. 115, is applicable to this suit.

6. That the United States District Court for the District of New Jersey erred in holding that injustice cannot result to the plaintiff herein until the entry of final judgment in the action in the New Jersey Supreme Court referred to in the bill herein, wherein William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant.

7. That the District Court of the United States for the District of New Jersey erred in not holding that irreparable injury and injustice has been and will continue to be done unless the said William R. Kane be permanently enjoined and restrained from continuing to prosecute and maintain the action now pending in the Supreme Court of the State of New Jersey in which the said William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant, and from taking any step or doing any act in aid of entering judgment against complainant herein in said suit, or taking any step or doing any act based upon any judgment in said action.



8. That the District Court of the United States for the District of New Jersey erred in holding that until the proceedings sought to be enjoined herein have developed into a final judgment they are literally within the prohibition of Section 265 of the Judicial Code, and that until the entry and attempted enforcement of such judgment a Federal court cannot take cognizance of the plaintiff's allegation of lack of service in the suit pending in the Supreme Court of the State of New Jersey wherein William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant, as a ground for enjoining the defendant herein from prosecuting his said suit in the said State court.

9. That the District Court of the United States for the District of New Jersey erred in not taking cognizance of the plaintiff's allegation of lack of service in the action in the Supreme Court of the State of New Jersey in which William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant as a ground for enjoining the defendant herein from prosecuting his said suit in the said State court and in not granting the relief prayed in the plaintiff's bill by reason thereof.

Wherefore, complainant prays that the said decree be reversed and that the said District Court of the United States for the District of New Jersey be directed to enter a decree granting the prayer of the plaintiff herein.

Dated, Newark, April 21, 1919.

LINTON SATTERTHWAITE,  
By W. R. SEABURY.

LINTON SATTERTHWAITE,  
*Attorney for Plaintiff,*

American Mechanic Building,  
137 East State Street,  
Trenton, New Jersey.



IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

October Term, 1919. No. 2475 (List No. 11).

*Essanay Film Manufacturing Company,*  
Appellant,

v.

*William R. Kane,*  
Appellee.

And afterwards, to wit, on the ninth day of October, 1919, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Hon. Joseph Buffington and the Hon. Victor B. Woolley, Circuit Judges, and the Hon. Hugh M. Morris, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the twenty-ninth day of March, 1920, come the parties aforesaid by their counsel aforesaid, the Court now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

October Term, 1919.

*Essanay Film Manufacturing Company,*  
Appellant,

v.

*William R. Kane,*  
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR  
THE DISTRICT OF NEW JERSEY.

Before BUFFINGTON and WOOLLEY, Circuit Judges, and  
MORRIS, District Judge.

MORRIS, *District Judge.*

This is an appeal by Essanay Film Manufacturing Company, an Illinois corporation, plaintiff below, from a decree of the District Court dismissing its bill of complaint against William R. Kane, a citizen of New Jersey. The bill alleges in part that the defendant instituted and is now prosecuting

against the plaintiff in the Supreme Court of the State of New Jersey a suit at law for damages; that service of the summons issued in that suit was attempted to be made upon the defendant by services upon the Secretary of State of the State of New Jersey, under New Jersey Laws of 1900, chapter 124; that for the reasons alleged in the bill such attempted service was wholly null and void; that the defendant did not appear and judgment by default for want of appearance was entered against it. The bill prays that the defendant herein be enjoined from prosecuting his action to final judgment by assessing damages and from all further proceedings therein.

At the hearing on bill and answer the District Court, regarding the proceedings to have been prematurely begun, dismissed the bill on the theory that the equity powers by which a federal court will restrain a person from gathering the fruits of a void judgment obtained in a state court do not extend to judgments which are merely interlocutory; and that, if an injunction were granted as prayed in this case, it would operate, not to restrain the enforcement of a void judgment (for this judgment, being interlocutory, is not capable of enforcement), but "to stay proceedings in a court of a state," in violation of section 265 of the Judicial Code, and to prevent the rendition by that court of a final judgment which might conceivably be entirely valid. *Essanay Film Mfg. Co. v. Kane*, 256 Fed. 271.

We think the Court was right both in dismissing the bill and in the reasons given therefor. The sole purpose of the bill is to obtain an injunction to prevent the defendant proceeding in the state court. The practical effect of such injunction would be to enjoin the state court from proceeding in the action. Such an injunction, except under the Bankruptcy Act, no court of the United States can grant. With this exception it is expressly forbidden by statute. Judicial Code, Sec. 265; *Diggs v. Wolcott*, 4 Cranch 179; *Dial v. Reynolds*, 96 U. S. 340. The ban of the statute is not evaded by directing the injunction to the litigating party. *Peck v. Jenness*, 7 How. 612; *Coeur D'Alene Ry. & Nav. Co. v. Spalding*, 93 Fed. 280. This rule is not modified by *Simon v. Southern Railway Co.*, 236 U. S. 115. The crux of that decision as we understand it is embodied in the following sentence appearing on page 124:

"But when the litigation has ended and a final judgment has been obtained—and when the plaintiff endeavors to use such judgment—a new state of facts, not within the language of the statute may arise."

In the case at bar no one of the three conditions there mentioned by the Supreme Court exists. The litigation in the

Supreme Court of New Jersey has not ended; a final judgment has not been obtained and no final judgment having been obtained the plaintiff is, of course, not endeavoring to enforce such judgment.

Furthermore, the state court has jurisdiction of the subject matter of the suit instituted therein by this defendant. It has full power to determine whether by the service of the summons upon the Secretary of State it acquired jurisdiction over the Essanay Film Manufacturing Company. Under these circumstances the plaintiff is not remediless save in a court of equity. An appeal to a court of equity to restrain proceedings in another court competent to decide every question that may arise in the course of the proceedings is without support in principle and unwarrantably tends to the multiplication of litigation and the production of delay. *Wilson v. Lambert*, 168 U. S. 611, 618.

The decree below must be affirmed.

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(Endorsements: 2475. Opinion of the Court by Morris, J. Received and Filed Mar. 29, 1920. Saunders Lewis, Jr., Clerk.)

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IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

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October Term, 1919. No. 2470 (List No. 11).

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*Essanay Film Manufacturing Company,*  
Appellant,

v.  
*William R. Kane,*  
Appellee.

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ORDER AFFIRMING DECREE.

Appeal from the District Court of the United States, for the District of New Jersey.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the District of New Jersey, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, March 29, 1920.

JOS. BUFFINGTON,  
Circuit Judge.

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(Endorsements: 2475. Order Affirming Decree Received and Filed Mar. 29, 1920. Saunders Lewis, Jr., Clerk.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

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*Essanay Film Manufacturing Company,*  
Appellant,  
against  
*William R. Kane,*  
Appellee.

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ASSIGNMENT OF ERRORS.

(Filed April 20, 1920.)

Now comes the appellant, Essanay Film Manufacturing Company, by its solicitor, and says that in the record and proceedings aforesaid of the United States Circuit Court of Appeals for the Third Circuit, in the above entitled cause, and in the rendition of the final judgment therein, manifest error has intervened to the prejudice of said appellant in this, to wit:

1. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey, dismissing the bill of complaint herein.

2. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in not granting the relief prayed for by the bill herein.

3. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in holding that the suit herein falls within the prohibition of Section 265 of the Judicial Code.

4. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in not holding that the rule of law enunciated in *Simon v. Southern Railway Co.*, 236 U. S. 115, is applicable to this suit.

5. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in holding that the rule of law enunciated in *Simon v. Southern Railway Co.*, 236 U. S. 115, is confined to cases in which a final judgment is sought to be enforced.

6. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in holding that injustice cannot result to the appellant herein until the entry of final judgment in the action in the New Jersey Supreme Court referred to in the bill herein,

wherein William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant.

7. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in not holding that irreparable injury and injustice has been and will continue to be done unless the said William R. Kane be permanently enjoined and restrained from continuing to prosecute and maintain the action now pending in the Supreme Court of the State of New Jersey, in which the said William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant, and from taking any step or doing any act in aid of entering judgment against appellant herein in said suit, or taking any step or doing any act based upon any judgment in said action.

8. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in holding that until the proceedings sought to be enjoined herein have developed into a final judgment they are literally within the prohibition of Section 265 of the Judicial Code, and that until the entry and attempted enforcement of such judgment a federal court cannot take cognizance of the plaintiff's allegation of lack of service in the suit pending in the Supreme Court of the State of New Jersey wherein William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant, as a ground for enjoining the defendant herein from prosecuting his said suit in said state court.

9. Said Circuit Court of Appeals erred in entering judgment affirming the action of the District Court for New Jersey in not taking cognizance of the plaintiff's allegation of lack of service in the action in the Supreme Court of the State of New Jersey, in which William R. Kane is plaintiff and Essanay Film Manufacturing Company is defendant, as a ground for enjoining the defendant herein from prosecuting his said suit in the said state court and in not granting the relief prayed in the plaintiff's bill by reason thereof.

Wherefore, the said Essanay Film Manufacturing Company, appellant, prays that, for the errors aforesaid and other errors appearing in the record of the United States Circuit Court of Appeals in the above entitled cause, to the prejudice of appellant, the said judgment of the said Circuit Court of Appeals be reversed, annulled and for naught esteemed, and that said cause be remanded to the District Court for New Jersey with instructions to enter a decree granting the prayer of the appellant herein.

WILLIAM M. SEABURY,  
*Solicitor for Appellant.*

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

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*Essanay Film Manufacturing Company,*  
Appellant,  
against

*William R. Kane,*

Appellee.

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PETITION FOR APPEAL TO SUPREME COURT.  
(Filed April 20, 1920.)

*To the Honorable Judges of the United States Circuit Court  
of Appeals for the Third Circuit:*

The above mentioned appellant, Essanay Film Manufacturing Company, respectfully shows that the above entitled cause is now pending in the United States Circuit Court of Appeals for the Third Circuit, and that a judgment has herein been rendered on the 29th day of March, 1920, affirming the decree of the District Court of the United States for New Jersey, and that the matter in controversy in said suit exceeds \$1000, besides costs, and involves the construction of the United States statutes and of the Fourteenth Amendment of the Constitution of the United States. That this cause is one in which the United States Circuit Court of Appeals for the Third Circuit has no final jurisdiction; that it is a proper case to be reviewed by the Supreme Court of the United States on appeal.

WHEREFORE, the said appellant prays that an appeal be allowed it in the above entitled cause, directing the Clerk of the United States Circuit Court of Appeals for the Third Circuit to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herein filed by said appellant may be reviewed and, if error be found, corrected according to the laws and customs of the United States.

WILLIAM M. SEABURY,  
Attorney for Appellant.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

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*Essanay Film Manufacturing Company,*  
Appellant,  
against  
*William R. Kane,*  
Appellee.

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## ORDER ALLOWING APPEAL.

(Filed April 20, 1919.)

IT IS HEREBY ORDERED, that the appeal in the above entitled cause to the Supreme Court of the United States be, and is hereby allowed, as prayed, and that the appeal bond fixed at \$250.

JOS. BUFFINGTON,  
*U. S. Circuit Judge, Third Circuit.*

Dated April 20, 1920.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE  
THIRD CIRCUIT.

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*Essanay Film Manufacturing Company,*  
Appellant,  
against  
*William R. Kane,*  
Appellee.

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## PRAECIPE FOR RECORD.

(Filed April 20, 1920.)

*To the Clerk of Said Court:*

SIR: Please make and furnish us with a certified printed transcript of the record (including the proceedings had in said Circuit Court of Appeals) in accordance with the rules of the Supreme Court of the United States and not less than thirty (30) uncertified copies thereof for use on appeal to the Supreme Court of the United States in the above entitled cause, the said transcript to consist of a copy of the following:

1. Printed transcript of record on which the cause was heard in said Circuit Court of Appeals, to which will be added

a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Opinion, filed.
3. Decree, filed and entered.
4. Petition for allowance of appeal to Supreme Court of the United States, filed April 20, 1920.
5. Assignment of errors on said appeal, filed April 20, 1920.
6. Order allowing appeal to the Supreme Court of the United States and fixing amount of bond, filed April 20, 1920.
7. Bond on said appeal filed April, 1920.
8. Citation on said appeal, filed April, 1920.
9. Præcipe for record on said appeal, filed April 20, 1920.

Please prepare the thirty or more uncertified printed copies of said record, by printing thirty or more copies of the above mentioned proceedings that were had and papers that were filed in said cause in said Circuit Court of Appeals, and by binding one of the latter printed copies of said proceedings at the end of each of the thirty or more extra printed transcript of record, on which said cause was heard in said Circuit Court of Appeals.

WILLIAM M. SEABURY,  
*Attorney for Appellant.*

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I hereby acknowledge service of a copy of the within and foregoing præcipe upon me, as attorney for the undersigned defendant, this                      day of                      , 1920.

*Attorney for William R. Kane.*



## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,  
EASTERN DISTRICT OF PENNSYLVANIA, } *sc.*:  
THIRD JUDICIAL CIRCUIT.

I, SAUNDERS LEWIS, JR., Clerk of the United States Circuit Court of Appeals, for the Third Circuit, Do HEREBY CERTIFY the foregoing to be a true and faithful copy of the original record and proceedings in this Court in the case of Essanay Film Manufacturing Co., Appellant, v. William R. Kane, Appellee, on file, and now remaining among the records of the said Court, in my office.

(Seal) IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this twentieth day of April in the year of our Lord one thousand nine hundred and twenty and of the Independence of the United States the one hundred and forty-fourth.

*Clerk of the U. S. Circuit Court  
of Appeals, Third Circuit.*